



**TECHNET**  
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December 9, 2021

The Honorable Chris Rothfuss  
Select Committee on Blockchain,  
Financial Technology and Digital  
Innovation Technology  
Wyoming State Legislature  
200 West 24<sup>th</sup> Street  
Cheyenne, WY 82002

The Honorable Jared Olsen  
Select Committee on Blockchain,  
Financial Technology and Digital  
Innovation Technology  
Wyoming State Legislature  
200 West 24<sup>th</sup> Street  
Cheyenne, WY 82002

*Re: The Wyoming Data Privacy Act (22LSO-0146) on the December 10, 2021  
Agenda for the Select Committee on Blockchain, Financial Technology and Digital  
Innovation Technology Meeting.*

Dear Chairman Rothfuss, Chairman Olsen and Members of the Select Committee:

Thank you for your leadership on critical innovation issues that affect both the economic development of the State of Wyoming and the everyday lives of its citizens. On behalf of TechNet's members, I appreciate the opportunity to share our perspective on the draft Wyoming Data Privacy Act (22LSO-1046). TechNet opposes this draft bill and outlines our points of concern in this letter, based on the collective expertise and experience of our membership.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. Our diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over four million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data is used, as well as control over their data. TechNet supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans. The global nature of data demands a federal policy, and even the most well-designed state statute will ultimately contribute to a patchwork of different standards across the country, resulting in steep compliance costs and consumer confusion.

In the absence of a uniform standard, TechNet urges states considering their own legislation to consider interoperability with existing models as the default position. Each new concept or definitional change could result in consumer confusion and significantly increase compliance costs for businesses. The California Department of Finance in 2019 estimated the one-time compliance costs of the state's first privacy law at over \$55 billion. Small and midsize companies face \$50,000-\$100,000 to come into compliance with vague and ever-changing requirements.

### **The Colorado Privacy Act is a Work in Progress**

Our primary caution in looking to the Colorado Privacy Act SB 21-190 (hereafter, CPA) as a template for the Wyoming Data Privacy Act is that the CPA is essentially incomplete and was openly acknowledged by both the Colorado executive and legislative branches as requiring further legislative work. In his July 7, 2021 signing statement, Colorado Governor Jared Polis emphasized this dynamic and highlighted that the bill required additional work:

*However, in the haste to pass this bill, several issues remain outstanding. My chief concern is ensuring Colorado's competitiveness with other states as an incubator of new technologies and innovations. SB 21-190 will require clean-up legislation next year, and in fact, the sponsors, proponents, industry, and consumers are already engaged in conversations to craft that bill. We encourage those to continue but urge that they strike the appropriate balance between consumer protection while not stifling innovation...*

*– Colorado Governor Jared Polis,  
July, 7 2021 Signing Statement on CO SB 21-190*

TechNet participated closely as a stakeholder in the 2021 Colorado legislative process to pass the CPA, and the "clean-up legislation" has not yet been drafted – leaving the CPA essentially unfinished in Colorado. The legislative history and present dynamic of the CPA are critically informative to Wyoming and your Committee in its interest in passing omnibus data privacy legislation. Data privacy legislation is a complex and herculean undertaking, even in a regular session year. *TechNet is especially concerned about the ability of the legislature to meaningfully and thoughtfully deliberate on this complex legislation in the further condensed timeframe of a budget session year like 2022.*

Apart from the absence of "clean-up legislation" in Colorado which Wyoming could use as a reference point in 2022 to correct the underlying issues imported from the CPA to the Wyoming Data Privacy Act, the Colorado Attorney General Office also has not started the implementation and rulemaking process for the CPA. This leaves the CPA as a truly unfinished law that leaves a variety of stakeholder concerns and conflicts with other state laws unaddressed.

## **Topline concerns with the draft Wyoming Data Privacy Act**

- *Unclear Regulatory Parameters:* The Wyoming Data Privacy Act includes the drafting ambiguity of the CPA around a number of key regulatory provisions. This leaves an expansive interpretation as to the application of the law in practice, due to both missing defined terms and lack of specific language to clarify the regulatory scope in other provisions of the bill. The fundamental issues include a lack of defined scope around what applies as a 'trade secret' and 'biometric data,' ambiguity around how opt-out requests from agents apply; as well as ambiguity on consumer data portability, the non-discrimination clause and pseudonymous data. If Wyoming is to take up this draft bill, a more thorough list of issues around clarity with regard to legal application would be necessary. If left unaddressed, the unclear regulatory terms and applications will create confusion for companies aiming to comply in good faith with the proposed legislation.
- *State Patchwork of Conflicting Privacy Regulation:* TechNet believes that the internet's borderless nature makes a patchwork of state privacy laws untenable for consumers and the digital economy. In the end, a 50-state patchwork of state-based privacy laws will create more problems than it solves. By copying the CPA, the Wyoming Data Privacy Act includes the conflicts that the CPA created with the other omnibus privacy laws that have been enacted to date in California, The California Privacy Rights and Enforcement Act (CPRA) and in Virginia, The Virginia Consumer Data Protection Act (VCDPA). The CPA departs from both laws in many ways, creating interoperability issues for companies who want to act in good faith to comply with all of the laws. If Wyoming takes up the Wyoming Data Privacy Act in this manner, all of these interoperability conflicts must be addressed and discussed in further detail to avoid a more fragmented national data privacy framework.
- *Private Right of Action:* TechNet opposes the inclusion of a Private Right of Action, because any unintentional or perceived violation could result in ruinous liability for companies. A private right of action will encourage unnecessary litigation that could lead to negative, unintended consequences for Wyoming businesses of all sizes. The penalties imposed under the bill would enable class action firms to wield this statute as a cudgel against well-meaning businesses to extract significant settlements from companies with little or no actual value delivered to the consumer. In fact, the only privacy statute that allows private rights of action is the Illinois Biometric Information Privacy Act (BIPA), which has seen flagrant abuse of class action litigation with over 1,000 class action lawsuits filed in the past five years. The end result of BIPA's private right of action is that legislators have expressed bipartisan support for reforms of its remedies.

In closing, online privacy is a complex issue that has many ramifications for businesses and startups. We strongly believe online privacy regulations should be left to the federal government, but we understand that states often serve as a laboratory for democracy. With that in mind, this effort should be done with caution and crafted in a way that does not harm Wyoming's emerging technology and innovation economy. We emphasize that it is ill-advised to pass omnibus privacy legislation in the expedited timeline of a budget session – this is simply an inadequate timeframe in which to deliberate on complex data privacy policy. TechNet appreciates the opportunity to be part of the process as your Committee opens this policy discussion in the interim. Please reach out to Ruthie Barko at [rbarko@technet.org](mailto:rbarko@technet.org) with any questions.

Sincerely,

A handwritten signature in black ink that reads "Ruthie Barko". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ruthie Barko  
Executive Director, Colorado and the Central U.S.  
TechNet

Cc: Members of the Select Committee on Blockchain, Financial Technology and Digital Innovation Technology